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Supreme Court of the United States

In re WILLIAM W. WATTS.

BRIEF FOR PETITIONER.

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Supreme Court of the United States

In re William W. Watts.

Brief for petitioner on motion for leave to file a petition for a writ of habeas corpus and a writ of certiorari.

STATEMENT.

The petition sets out in detail all the facts of the case. It is sufficient here to summarize them.

The Floyd County, Indiana, Circuit Court is a State Court of original general jurisdiction. In that Court Joseph T. Ryerson & Son, on the 30th day of December, 1902, filed a complaint against M. Zier & Co., a corporation of the State of Indiana, engaged in the business of boiler making in the City of New Albany, in Floyd County, in that State. Upon the complaint a summons was duly issued and duly served on the same day on which the complaint was filed. On the same day the plaintiff moved the Judge of the Court to appoint a Receiver of the property of the defendant, and notice of the motion having been given to the defendant, it appeared thereto. The Judge of the Court sustained the motion and made an order appointing the New Albany Trust Company Receiver. The Receiver qualified at once and as such Receiver took possession of the property of the defendant.

The complaint averred an indebtedness of the defendant to the plaintiffs of $15,000 on certain promissory notes. That the defendant owed debts aggregating about $65,000, which it is unable to pay. That the defendant is insolvent. That it is threatened with numerous suits by its creditors. That its property consists of a manufacturing plant, and that it is engaged in filling numerous unfinished orders, and that if its property should be taken on attachments or executions great loss would result to the defendant and its creditors. That it is necessary, in order to preserve the property of the defendant and keep it a going concern, that a Receiver be appointed. The prayer was for judgment on the debts and for the appointment of a Receiver.

By several orders thereafter entered the Receiver was authorized and directed to continue the business, complete unfinished contracts, buy new material for that purpose, etc. Under these orders the Receiver acted and incurred many liabilities and obligations as Receiver.

A statute of Indiana provides as follows :

> "A Receiver may be appointed by the court, or a judge thereof, in vacation in the following cases:
>
> . . . . . .
>
> "Fifth. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."
>
> (Burns' Indiana Statute, Sec. 1236 and Sub-Sec. 5.)

In this condition of affairs, while the Receiver was engaged in operating the plant under the orders of the Floyd Circuit Court, on the 6th of February, 1903, the Inland Steel Company, a creditor of M. Zier & Co., who had theretofore appeared in the suit in the State Court and participated in the proceedings there, together with another creditor, filed their petition in involuntary bankruptcy in the United States District Court for the District of Indiana, against M. Zier & Co. No one was made a party defendant to the petition in the bank

ruptcy proceedings, except the alleged bankrupt debtor, M. Zier & Co., but the petition itself alleged that the property of the debtor was in the hands of a Receiver appointed by a State Court, without alleging in what proceedings or by what Court the Receiver was appointed.

Afterward, on the 11th of February, 1903, one of the petitioning creditors, the Inland Steel Company, filed its petition in the bankruptcy proceedings, showing to the Court that the property of the debtor was in the hands of the New Albany Trust Company as Receiver of the Floyd Circuit Court, appointed as such in the action of Joseph T. Ryerson & Son against M. Zier & Co. then pending in that Court. This petition contained the following further statement:

> "That said Receiver is now running the business of M. Zier & Co. and is completing certain contracts, and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company, and has placed in charge of said plant one Michael Zier, who is the president and treasurer of said alleged bankrupt. That said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business; and your petitioner avers that if said Receiver is permitted to remain in charge, that it will result to the injury and detriment of such of the creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.
>
> "Your petitioner further states that W. W. & J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed Receiver, and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt, to the detriment of the creditors at large of said alleged bankrupt."

The petition prayed the appointment of a Receiver in the bankruptcy proceedings.

Upon that petition, on the day on which it was filed, February 11, 1903, the United States District Court made an order in the bankruptcy proceedings, appointing Frederic D. Connor Receiver of the property of the alleged bankrupt, M. Zier & Co. The order appointing the Receiver in the bankruptcy proceedings contained, among other things, the following:

> "Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all tools, machinery, appliances, materials and finished property within and about the plant in said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in the City of New Albany, and all other property of said M. Zier & Co., wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Co., now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

The Receiver appointed in the bankruptcy proceedings duly qualified as Receiver under the order of appointment and on the 13th of February, 1903, appeared at New Albany and demanded of the New Albany Trust Company, Receiver of the State Court, that the latter deliver to him all the assets and effects of said M. Zier & Co. in its hands. On the next day, February 14th, the receiver in the bankruptcy proceedings, by his attorney, filed in the action pending in the Floyd Circuit Court, wherein the New Albany Trust Company was appointed receiver, his petition showing his appointment as receiver by the United States District Court in

the bankruptcy proceedings, and praying the Floyd Circuit Court to enter an order requiring the New Albany Trust Company as receiver to turn over and surrender to him as receiver in bankruptcy the property of M. Zier & Co., which the New Albany Trust Company as receiver held in its possession. This was the last day of the then term of the Floyd Circuit Court, the next term whereof began on the 9th of March following. No action was taken on the petition of the receiver appointed in the bankruptcy proceedings, and an order was entered continuing the petition until the next term of the Floyd Circuit Court. The petition of the receiver appointed in the bankruptcy proceedings, which was filed in the Floyd Circuit Court, made a general appearance in that court without any reservations whatever.

Notwithstanding the fact that the Receiver in the bankruptcy proceedings filed his petition in the suit in the State Court he continued his demand for the delivery of the property to him by the New Albany Trust Company as Receiver. The order appointing him as Receiver directed him to take the possession of the property from the New Albany Trust Company as Receiver and required the latter to deliver the possession of the property to the Receiver in the bankruptcy proceedings. It was thought by the New Albany Trust Company, Receiver, and by its attorney, William W. Watts, that the peremptory order made in the bankruptcy proceedings directing the Receiver there appointed to take the property from the possession of the Receiver appointed in the State Court was inadvertently made by the Bankrupt Court, and that the Bankrupt Court would, upon suggestion, rescind so much of its order as made such requirement. So believing, William W. Watts, attorney for the Receiver in the State Court, telephoned to the Judge of the United States District Court at Indianapolis, and requested him to direct the Receiver in the bankruptcy proceedings not to proceed further with

his demand until the petitioner and the New Albany Trust Company could have an opportunity to explain to the Court the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the Floyd Circuit Court.

The Judge of the United States District Court stated in reply by telephone that a hearing of the matters might be had at Indianapolis on February 16th; whereupon the New Albany Trust Company, Receiver, filed its petition in the Floyd Circuit Court, in which it was stated that the United States District Court had appointed a Receiver in the bankruptcy proceedings and that the Receiver so appointed was demanding the possession of the property in the hands of the State Court Receiver, and that in the opinion of the Receiver and its attorney the order of the United States District Court directing its Receiver to peremptorily take possession of the property was inadvertently made, and further, that the State Court Receiver and its attorney believed that the United States District Court, upon suggestion of all the facts, would rescind its peremptory order, and the petition prayed the advice of the Court in the premises. Upon that petition the Floyd Circuit Court on the same day made an order authorizing the Receiver and its attorney, William W. Watts, to go to Indianapolis and without entering their appearance, and by protestation against appearance except only for the purpose of making the explanation, state to the United States District Court the condition of the record in the Floyd Circuit Court. Accordingly Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver, and William W. Watts, its attorney, appeared before the United States District Court at Indianapolis on the 16th day of February and exhibited to that Court the order of the Floyd Circuit Court authorizing them to appear and make a statement and argument.

These proceedings were protracted until February 17th when, ultimately, the Judge of the United States District

Court demanded peremptorily of Henry E. Jewett as the representative of the New Albany Trust Company, Receiver, to know whether or not he would turn over the property in the hands of the New Albany Trust Company, Receiver, to Frederic D. Connor, Receiver, and stated that he did not wish to go down to New Albany with a club, but if it were necessary to go with a club, he would do so, whereupon Henry E. Jewett answered that he would turn over the property. The same demand was made by the Judge of the United States District Court of William W. Watts as the attorney for the New Albany Trust Company, Receiver, and he under like circumstances answered that he would advise the New Albany Trust Company, Receiver, to turn the property over to the Receiver appointed by the United States District Court.

Watts and Jewett left Indianapolis on the afternoon of February 17th, the former going to Louisville, Ky., and the latter to New Albany, Ind.

The situation was an embarrassing one to William W. Watts as well as to Henry E. Jewett, the representative of the New Albany Trust Company. They knew that they had no authority to make the agreement to turn over the property, because they had not been authorized to do so by the Floyd Circuit Court. Watts so keenly felt the situation in which he was put that on the following day, February 18th, in the afternoon he asked Mr. David A. Sachs, who is a lawyer and his friend, to go to New Albany with him for the purpose of aiding him in undertaking to explain to the Judge of the Floyd Circuit Court what had happened at Indianapolis, and as far as possible to justify Watts and persuade the Judge of the Floyd Circuit Court to make an order ratifying what had been done. They did go to New Albany together and made an oral statement to the judge of the Floyd Circuit Court. The Judge became positively angry and they returned to Louisville. On the following morning Mr. Watts and Mr. Sachs returned to New Albany and Mr.

Watts filed before the Judge a formal written statement or petition stating what had been done at Indianapolis, and asking leave of the Court to expunge from the record the order made on the 14th of February authorizing the New Albany Trust Company, Receiver, and its attorney to go to Indianapolis, and also to withdraw from the files the petition upon which that order was based. This was done in view of the fact that the Judge of the United States District Court was for some reason very much offended because of that order and petition. So far from making the order requested the Judge of the Floyd Circuit Court at once entered an order requiring Watts to show cause, if any he could, why he should not be held in contempt of Court.

On the same day, February 19, 1903, the New Albany Trust Company, receiver, filed in the Floyd Circuit Court its petition signed by Henry E. Jewett, stating what had occurred at Indianapolis, and asking leave of the court to turn the property in its hands over to the Receiver appointed by the United States District Court in the bankruptcy proceedings. So far from granting the authority asked, the Judge of the Floyd Circuit Court made an order citing the New Albany Trust Company to show cause why it should not be punished for contempt of court.

The judge of the Floyd Circuit Court requested all of the attorneys in the case to appear at New Albany before him on the following morning, February 20th.

In the meantime the Receiver of the United States District Court was pressing his demand for a delivery of the property to him, and on the evening before the New Albany Trust Company wrote him a letter stating the fact that it had filed its petition in the Floyd Circuit Court asking leave of that court to turn over the property, and that the judge had orally stated that he wanted the Receiver of the Floyd Circuit Court to hold the property until the accounts of the Receiver were rendered and passed upon, and suggested that this might be accomplished on the next

day, February 20th, and asking the Receiver of the United States District Court to defer action until that time as it would relieve the Receiver appointed by the State Court from much embarrassment; but stated further that if the Receiver appointed by the United States District Court would not defer action until the next day that the New Albany Trust Company, as Receiver, would turn the property over without any action at all of the Floyd Circuit Court, because it had stated to the Judge of the United States District Court that it would do so. The Receiver of the United States District Court expressed his unwillingness to delay the delivery of the property, whereupon the property was turned over to him by the New Albany Trust Company, in disregard of the order of the State Court.

In deference to the request of the Judge of the Floyd Circuit Court, Watts and Sachs went to New Albany on the morning of February 20th. During that day the Judge made an order removing the New Albany Trust Company as Receiver and appointing in its stead Charles D. Kelso as Receiver, and ordering him as Receiver to demand of the New Albany Trust Company and of Frederic D. Connor the possession of the property of M. Zier & Co., and ordering him further to report back to the Court whether or not the demand had been complied with. Late in the evening of that day Charles D. Kelso, Receiver, reported to the Judge of the Floyd Circuit Court that his demand for the property had been refused; whereupon the Judge of the Floyd Circuit Court made an order directing the issuance of a writ to the Sheriff of Floyd County, requiring him to take possession of the property from Frederic D. Connor and deliver it to Charles D. Kelso, Receiver. That writ was placed in the hands of the Sheriff and executed that evening without any force or violence, and the property was thus placed in the hands of Charles D. Kelso, Receiver of the Floyd Circuit Court.

On the 21st day of February, 1903, Frederic D. Connor, who was the Receiver appointed in the bankruptcy proceed-

ings, filed his petition and affidavit in those proceedings in the United States District Court, and upon that affidavit the Court made an order citing Charles D. Kelso, the Sheriff of Floyd County, his two deputies, the watchman placed in charge of the property by Kelso, Receiver, and William W. Watts and D. A. Sachs to appear before him on a certain day to show cause, if any they could, why they should not be held in contempt of that Court for a violation of its orders.

On the same day the United States District Attorney filed an information based upon the same affidavit, charging all these parties with the offense of contempt of the United States District Court, in violating its orders made in the bankruptcy proceedings, and in taking the property from the hands of its Receiver, and in withholding the property from his possession. The rule and information were tried as to Kelso, the Sheriff and his deputies, and the watchman placed in charge of the property by Kelso, Receiver, and they were found guilty of contempt, and Kelso was ordered to be confined in the Marion County, Indiana, jail for a period of sixty days, and the others for various periods less than that.

The information and rule were set for trial as to William W. Watts and D. A. Sachs at Indianapolis on the 9th day of March, 1903. They then appeared and the Court required them to respond and plead to the rule and information conjointly. They filed separate responses and pleas.

The response of William W. Watts was in substance as follows:

(1) That he is not guilty.

(2) Denying that he committed any act, or advised or consented to the commission of any act, in disobedience of any order of the Court, and denying that he in any way, either directly or by aiding, abetting or advising, forcibly or in any other way, took the property from Frederic D. Connor, Receiver, or withheld the custody of the property from him;

yet that the orders of the District Court, insofar as they peremptorily directed the Receiver of the United States District Court to take the property from the hands of the Receiver of the State Court, were void and beyond the power of the Court to make, and that the possession which the Receiver of the United States District Court acquired in the manner in which it was acquired was a wrongful and unlawful possession, and that the retaking of said property in the manner in which it was retaken was a lawful taking.

(3) All of the record facts were stated in full, both in the action in the State Court and in the bankruptcy proceedings; and further, the respondent stated that he had nothing whatever to do with the making of the order removing the New Albany Trust Company as Receiver and appointing Charles D. Kelso as Receiver, or with the order directing the issuance of a writ to retake the property, and did not know that such a writ had been ordered until the day after it had been ordered, nor did he know of the taking of the property thereunder until the next day.

Upon the filing of this response the respondent insisted that it should be taken as sufficient, but the Court ruled otherwise, and the trial proceeded, and the United States District Attorney introduced evidence and the defendant introduced evidence, and after argument of counsel the Court adjudged the respondent, William W. Watts, guilty of contempt, and ordered that he be confined in the Marion County jail at Indianapolis, Indiana, for a period of sixty days, and he is now so confined in that jail under that order.

ARGUMENT.

1. "It is established by the decision of this Court, that while 'the exercise of the power of punishment for contempt of their orders, by courts of general jurisdiction, is not subject to review by writ of error, or appeal to this Court,' yet, when 'a court of the United

States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that court had no authority to make, the order itself, being without jurisdiction, is void, and the order punishing him for the contempt is equally void;' and that, 'when the proceedings for contempt in such a case results in imprisonment, this court will, by its writ of *habeas corpus*, discharge the prisoner.'"

The foregoing is the first paragraph of the opinion of Mr. Justice Matthews *In re* Ayers, 123 U. S., 485.

The rule thus stated is the doctrine of an unbroken line of decisions of this Court.

Ex Parte Lange, 18 Wall., 163.
Ex Parte Rowland, 104 U. S., 604.
Ex Parte Fisk, 113 U. S., 713.
In re Ayers, 123 U. S., 443.
In re Lane, 135 U. S., 443.
In re Tyler, 149 U. S., 164.
In re Bonner, 151 U. S., 242.
In re McKenzie, 180 U. S., 536.

2. "The writ of certiorari will be allowed by this Court in aid of the writ of *habeas corpus* and for the purpose of enlarging the scope of the writ of *habeas corpus*."

Ex Parte Lange, 18 Wallace, 163.
In re Chetwood, 165, U. S., 443.
U. S. Revised Statutes, Sec. 716.

3. This Court has over and over again held the proposition to be universal that where one court has acquired jurisdiction over property another court may not summarily interfere with that possession.

This rule is stated as follows by Mr. Justice Matthews, in Covell vs. Heyman, 111 U. S. 182:

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise toward each other, whereby conflicts are avoided by

avoiding interference with the process of each other, is a principle of comity, with perhaps, no higher sanction than the utility which comes from concord; but between State courts and those of the United States, it is something more. It is a principle of right and law, and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they coexist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

Sheilds vs. Coleman, 157 U. S. 168.

3. The exclusive admiralty jurisdiction of the Federal Courts under the Constitution of the United States does not override the rule that where one court first acquires jurisdiction over and possession of the *res* another court may not summarily interfere with that possession.

In Taylor, *et al*, v. Carryl, 20 How., 583, it was argued that the general rule of comity and necessity does not apply to a case where a Federal Court is exercising its exclusive admiralty jurisdiction and that such jurisdiction when invoked supersedes and annuls the possession of the *res* theretofore acquired by a State Court. In denying this proposition Mr. Justice Campbell, delivering the opinion of this Court, said:

"But it is in this Court that the principle stated in Payne vs. Drew has received its clearest illustration, and been employed most frequently, and with most benignant results. It forms a recognized portion of the duty of this court to give preference to such principles and methods

of procedure as shall serve to conciliate the distinct and independent tribunals of the States of the Union, so that they may co-operate as harmonious members of a judicial system coextensive with the United States, and submitting to the paramount authority of the same Constitution, laws and Federal obligations; the decisions of this Court that disclose such an aim, and that embody the principles and modes of administration to accomplish it, have gone from the Court with authority, and have returned to it, bringing the vigor and strength that is always imparted to magistrates, of whatever class, by the approbation and confidence of those submitted to their government."

4. The power of the Congress under the Constitution of the United States, to pass a uniform system of bankrupt laws, does not when exercised make the bankrupt courts of the United States so far superior to the State courts as that the rule of comity and necessity, which requires that one Court shall not summarily disturb the possession of property which another Court has acquired and holds at the time of the institution of bankruptcy proceedings, is suspended, so that a bankruptcy court may summarily wrest the possession of such property from the Court which first acquired the possession.

In Peck, et al, vs. Jenness, et al, 7 How. 611, it was held that this doctrine of comity applied with equal force as between the Bankrupt Courts of the United States on the one hand and the State Courts on the other. There this Court, through Mr. Justice Grier, said:

"It is a doctrine of law too long established to require a citation of authorities, that, where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment till reversed, is regarded as binding in every other Court; and that where the jurisdiction of a Court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another Court. These

rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice."

This doctrine has been held by this Court to be controlling upon bankrupt courts in the following cases:

Marshall vs. Knox, 16 Wall. 551.

Doe vs. Childress, 21 Wall. 643.

Eyster vs. Gaff, 1 Otto, 521.

This Court, in the case of Metcalf vs. Barker, decided December 1, 1902, distinctly holds that this general doctrine of comity is applicable in all its vigor to the bankrupt courts of the United States under the present bankrupt law. This Court there refers to the case of Peck vs. Jenness, and affirms its application to bankrupt courts to-day.

The same proposition was held by this Court in the case of Pickins vs. Dent, decided on December 1, 1902.

Mr. Justice Miller, sitting on Circuit in the case of Johnson, assignee, vs. Bishop, Sheriff, Woolworth, 324, delivered an instructive opinion holding the same proposition under the bankrupt law of 1867.

5. The question is not one of the *right of possession*. It is a question of proper procedure. The *necessity* out of which the rule of comity arises exists in the case where the bankruptcy court has in fact the ultimate right of possession as well as in the case where the State Court has the ultimate right of possession. The real question is not at all which Court has the *right* of possession, but whether a court which has the actual possession shall be disturbed in that possession by a summary process from another court which claims that it has the right of possession. This being true as we understand

the rule, it is useless to argue how far the proceedings in bankruptcy annul assignments made under State laws or receiverships in State courts based upon insolvency of the defendant debtor. All these questions are aside from the question at bar. The question here is one merely of orderly procedure. If the question of right to the possession should in any way be conceived to be involved it is sufficient to say that at the time the United States District Court for the District of Indiana made its summary orders in the bankruptcy proceedings there had been no adjudication that the debtor is a bankrupt and *non constat* that he ever would be. Moreover, after the appointment of the Receiver in the bankruptcy proceedings and after the entry of the order directing him summarily to take possession of the property in the hands of the State Court Receiver, he voluntarily appeared by petition in the proceedings in the State Court and asked that Court to direct its Receiver to turn the property over to him. This petition was filed on the last day of the term of the State Court and no action was, therefore, taken on it, but it was continued to the next term of the Court, which began about three weeks thereafter. Subsequently to this the bankruptcy court entered another order redirecting its Receiver to summarily take possession of the property in the hands of the State Court Receiver and under this order the Receiver in bankruptcy pressed his demands until the State Court Receiver, without any authority from the Court appointing him, and in direct opposition to the Judge of the State Court, delivered the property to him, but this was not done until after the State Court Receiver had been told by the Judge of the United States District Court that he did not wish to come to New Albany with a club, but that he would do so if necessary.

Such was the manner in which the Receiver of the Bankrupt Court acquired the possession of the property from the Receiver of the State Court.

6. This Court has held that the Bankrupt Courts not only can not issue summary process to recover property held adversely, but that neither the Bankrupt Courts nor the Circuit Courts of the United States have jurisdiction of plenary suits for that purpose, except they be brought in the Federal Courts by consent of the party sued.

Bardes vs. Hawarden Bank, 178 U. S. 524.
Lou. Trust Co. vs. Comingor, 184 U. S. 18.

In the case at bar the State Court had its Receiver take the property into its possession and authorized it to continue the business and complete unfinished contracts which the defendant in the suit had made before the appointment of the Receiver. The Receiver was authorized to purchase new material for this purpose, and he had done so. Under the orders of the State Court he had contracted debts and obligations, to all of which the property in its hands must respond. It would be monstrous to hold that the Bankrupt Court, in this condition of affairs, had the right to summarily take the property from the State Court and leave all these matters unsettled. We submit that the State Court, having possession of the property by the appointment of a Receiver, in no way stands in the position of an assignee under a voluntary assignment for the benefit of creditors, yet, if such were the holding, still the property is in the adverse possession of the State Court, within the meaning of the decisions of this Court above cited, until the claims and demands created by the orders of the State Court shall be fully satisfied and discharged.

7. It is claimed that the property was voluntarily turned over by the Receiver of the State Court to the Receiver in the bankruptcy proceedings. The Receiver in the State Court was not a party to the bankruptcy proceedings. He had nowhere appeared in those proceedings by any pleading of any kind; yet the order

entered in the bankpuptcy proceedings as of date February 17, 1903, contains the following:

> "And said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice-president, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company as Receiver of the Floyd Circuit Court by its said Vice-president having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, its solicitor, in open Court to surrender full and immediate possession and control of the property and assets of said M. Zier & Co. in its possession or under its control as Receiver of said Floyd Circuit Court, to said Connor as Receiver of this Court upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court."

That consent, whatever it amounted to, was obtained under the singular circumstances hereinbefore stated. It was not in fact voluntary, but the consent was made following the assertion of the court, that it did not wish to go New Albany with a club, but that it would do so if necessary. But, however all this may be, the consent amounted to nothing. The appearance was made under an order of the Floyd Circuit Court expressly limiting the power of the Receiver to the making of a statement of the condition of the record of the Floyd Circuit Court. That order directed the Receiver of the State Court not to make a general appearance, but a limited one only for the sole purpose of of explaining to the United States District Court the condition of the record in the State Court. After that statement was made the peremptory inquiry was made by the Court of the representative of the Receiver whether he would turn the property over. Feeling that he must do so or suffer the consequences, the Receiver, in violation of the

orders of the State Court made the agreement. The agreement amounted to nothing. It was beyond the power of the Receiver to make. The Receiver was the mere custodian, with all its powers and rights confined by the orders of the State Court. Beyond this he had no power. This the United States District Court knew at the time. It is fundamental that a receiver has no powers aside from those conferred upon him by the orders of the court by which he was appointed. If a receiver might give up the property in his possession which he holds for the court, and as an arm of the court, without the consent or direction of the court which appointed him, there would be an end of receiverships. This Court said in Davis v. Gray, 16 Wall. 217, with respect to the powers of receivers:

> "A receiver is appointed upon a principle of justice for the benefit of all concerned. Every kind of property of such a nature that, if legal, it might be taken in execution, may, if equitable, be put into his possession. Hence the appointment has been said to be an equitable execution. He is virtually a representative of the court and of all the parties in interest in the litigation wherein he is appointed. He is required to take possession of property as directed, because it is deemed more for the interests of justice that he should do so than that the property should be in the possession of either of the parties in the litigation. He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is in *custodia legis*. He has only such power and authority as are given him by the Court, and must not exceed the prescribed limits. The Court will not allow him to be sued touching the property in his charge, nor for any malfeasance as to the parties, or others, without its consent; nor will it permit his possession to be disturbed by force, nor violence to be offered to his person while in the discharge of his official duties. In such cases the Court will vindicate its authority, and, if need be, will punish the offender by fine and imprisonment for contempt. The same rules are applied to the possession of a sequestrator. Where the property in the hands of

the receiver is claimed by another, the right may be tried by proper issues at law, by a reference to a master or otherwise, as the court in its discretion may see fit to direct."

We regard it wholly unnecessary to cite authorities to show that the act of the Receiver in agreeing to deliver up the property in his hands was wholly void for want of authority from the Court which appointed him.

8. The unauthorized agreement of the Receiver of the State Court to give up the property in his hands to the Receiver of the Bankrupt Court, being void for want of authority, it follows that his carrying out the agreement by actually delivering the property was also wrongful. By that act Frederic D. Connor came into the wrongful possession of the property and the wrong was committed as against the State Court and with respect of property which was then in the hands of the State Court in *custodia legis*. The State Court, therefore, had the power and the right, by processes issued from the Court directed to the proper officer, to restore the property to its custodian. This the State Court did by putting a writ into the hands of the Sheriff of the County, an officer of that Court. The Sheriff peaceably executed the writ and restored the property to the rightful possession of the Court by putting it into the hands of the Court's Receiver as the writ directed the Sheriff to do. That retaking of the property was a lawful taking. Frederic D. Connor was in possession of the property. He could not justify his possession by asserting that he was Receiver of the United States District Court, and as such held the property ; for, notwithstanding the fact that he was the Receiver of the United States District Court, his possession was not a lawful possession under any lawful order, or any lawful proceeding had by him as such Receiver. He, therefore, held the property unlawfully and the fact that he was receiver did not justify the unlawful holding.

This point has been expressly decided by this Court in White vs. Schloerb, 178 U. S. 542. In that case, after an adjudication in bankruptcy, an action of replevin in the State Court was commenced against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of that adjudication, and in the possession of the Referee in Bankruptcy at the time when the action of replevin was begun. The property having been taken under the replevin proceedings it was held by this Court that the District Court of the United States sitting in bankruptcy has jurisdiction by summary proceedings to compel the return of the property seized. In that case in the opinion rendered this Court uses this expression:

> "Not going beyond what the decision of the case before us requires, we are of opinion that the Judge of the Court of Bankruptcy was authorized to compel persons, who had forcibly and unlawfully seized and taken out of the judicial custody of that Court property which had lawfully come into its possession as part of the bankrupt property, to restore that property to its custodian, and therefore, our answer to the first question would be: 'The District Court sitting in Bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'"

In the very recent case of Metcalf v. Barker, decided by this Court on December 1, 1902, Mr. Chief Justice Fuller, in delivering the opinion of the Court, referred to the quotation last above made from the case of White v. Schloerb, and said:

> "This cautious utterance — and courts must be cautious when dealing with the conflict of jurisdiction—sustains as far as it goes the converse of the proposition when presented by a different state of facts."

9. Submitting that the Court must hold that the writ of habeas corpus and the writ of certiorari should issue, we ask that the Court, by some appropriate order

conformably to the practice of this Court, direct the petitioner to be admitted to bail, conditioned for his appearance in this Court on the return day of the writ.

DAVID W. FAIRLEIGH,
BERNARD FLEXNER,
Counsel for Petitioner.

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Supreme Court of the United States.

In re WILLIAM W. WATTS.

BRIEF FOR PETITIONER ON FINAL HEARING.

DAVID W. FAIRLEIGH,
BERNARD FLEXNER,
Counsel for Petitioner.

POINTS AND AUTHORITIES.

1. When a person is imprisoned by a United States Court for refusing to comply with an order of that Court, and such order is beyond the jurisdiction or power of the Court to make, the order itself is void, and the order punishing for contempt is likewise void, and this Court will, on writ of habeas corpus, discharge the person so imprisoned.

Ex parte Lange, 18 Wall. 163.
Ex parte Rowland, 104 U. S. 604.
Ex parte Fisk, 113 U. S. 713.
In re Ayres, 123 U. S. 443.
In re Lane, 135 U. S. 443.
In re Tyler, 149 U. S. 164.
In re Bonner, 151 U. S. 242.
In re McKenzie, 180 U. S. 536.

2. An order of a United States District Court sitting in bankruptcy, commanding its Receiver to peremptorily take from the possession of a Receiver of a State Court property in his hands as such at the time the bankruptcy proceedings were begun, is void.

Peck vs. Jenness, 7 How. 611.
Taylor vs. Carryl, 20 How. 583.
Marshall vs. Knox, 16 Wall. 551.
Doe vs. Childress, 21 Wall. 643.
Covell vs. Heyman, 111 U. S. 182.
Shields vs. Coleman, 157 U S. 168.
Johnson, Assignee, vs. Bishop, Sheriff, Woolworth, 324.
Metcalf vs. Barker, 23 Sup. Ct. Rep. 69.
Pickens vs. Roy, 23 Sup. Ct. Rep. 78.
Louisville Trust Co. vs. Comingor, 184 U. S. 18.
Bardes vs. Hawarden Bank, 178 U. S. 524.

3. A Receiver appointed by a Court has no authority to surrender the possession of the property in his hands without authority from the Court which appointed him, and the person who so acquires the possession of the property from him is in wrongful possession, and the Court may issue an appropriate writ to restore the possession of the property to a custodian of the Court.

Davis vs. Gray, 16 Wall. 217.

Shields vs. Coleman, 157 U. S. 168.

White vs. Schloerb, 178 U. S. 542.

Metcalf vs. Barker, 23 Sup. Ct. Rep. 78.

Supreme Court of the United States.

IN RE WILLIAM W. WATTS.

BRIEF FOR PETITIONER ON FINAL HEARING.

STATEMENT.

The petition sets out in detail all the facts of the case. It is sufficient here to summarize them.

The Floyd County, Indiana, Circuit Court (hereinafter called the State Court) is a State Court of original general jurisdiction. In that Court Joseph T. Ryerson & Son, on the 30th day of December, 1902, filed a complaint against M. Zier & Co. (R., p. 1), a corporation of the State of Indiana, engaged in the business of boiler making in the City of New Albany, in Floyd County, in that State. Upon the complaint a summons was duly issued and duly served on the same day on which the complaint was filed. (R., pp. 11-12.) On the same day the plaintiff moved the Judge of the Court to appoint a Receiver of the property of the defendant, and notice of the motion having been given to the defendant, it appeared thereto. The Judge of the Court thereupon sustained the motion and made an order appointing the New Albany Trust Company Receiver, and it qualified at once as such receiver and took possession of the property of the defendant. (R., pp. 13-15.)

The complaint averred an indebtedness of the defendant to the plaintiffs of $15,000 on certain promissory notes. That the defendant is insolvent and owed debts aggregating about $65,000, which it is unable to pay. That it is threatened with numerous suits by its creditors. That its property consists of a manufacturing plant; that it is engaged in filling numerous unfinished orders, and if its property should be taken on attachments or executions great loss would result to the defendant and its creditors. That it is necessary, in order to preserve the property of the defendant and keep it a going concern, that a Receiver be appointed. The prayer was for judgment on the debts and for the appointment of a Receiver. (R., p. 11.)

By several orders thereafter entered the Receiver was authorized and directed to continue the business, complete unfinished contracts, buy new material for that purpose, etc. Under these orders the Receiver acted and incurred many liabilities and obligations as Receiver. (R. p. 16-24.)

A statute of Indiana provides as follows:

> "A Receiver may be appointed by the Court, or a judge thereof, in vacation in the following cases:
>
> . . . . . .
>
> "Fifth. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."
>
> (Burns' Indiana Statute, Sec. 1236 and Sub-Sec. 5.)

In this condition of affairs, while the Receiver was engaged in operating the plant under the orders of the State Court, on the 6th of February, 1903, the Inland Steel Company, a creditor of M. Zier & Co., who had theretofore appeared in the suit in the State Court and participated in the proceedings there, together with two other creditors, filed their

petition in involuntary bankruptcy in the United States District Court for the District of Indiana (hereinafter called the United States Court) against M. Zier & Co. No one was made a party defendant to the petition in the bankruptcy proceedings, except the alleged bankrupt debtor, M. Zier & Co., but the petition itself alleged that the property of the debtor *was in the hands of a Receiver appointed by a State Court*, without alleging in what proceedings or by what Court the Receiver was appointed (R., pp. 66-68), but the Receiver of the State Court was not made a party.

Afterwards, on the 11th of February, 1903, one of the petitioning creditors, the Inland Steel Company, filed its petition in the bankruptcy proceedings, showing specifically to the Court that the property of the debtor was in the hands of the New Albany Trust Company as Receiver of the State Court, appointed as such in the action of Joseph T. Ryerson & Son against M. Zier & Co. then pending in that Court. This petition contained the following further statement:

> "That said Receiver is now running the business of M. Zier & Co. and is completing certain contracts, and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company, and has placed in charge of said plant one Michael Zier, who is the president and treasurer of said alleged bankrupt. That said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business; and your petitioner avers that if said Receiver is permitted to remain in charge, that it will result to the injury and detriment of such of the creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.
>
> "Your petitioner further states that W. W. & J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein

said New Albany Trust Company was appointed Receiver and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt, to the detriment of the creditors at large of said alleged bankrupt."

The petition prayed the appointment of a Receiver in the bankruptcy proceedings. (R., pp. 71-73.)

Upon that petition, on the day on which it was filed, February 11, 1903, the United States Court made an order in the bankruptcy proceedings, appointing Frederic D. Connor Receiver of the property of the alleged bankrupt, M. Zier & Co. The order appointing the receiver in the bankruptcy proceedings contained, among other things, the following:

"Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all tools, machinery, appliances, materials and finished property within and about the plant in said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in the City of New Albany, and all other property of said M. Zier & Co., wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Co., now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same." (R., p. 74.)

The Receiver thus appointed in the bankruptcy proceedings duly qualified as Receiver under the order of appointment and on the 13th of February, 1903, appeared at New Albany and demanded of the New Albany Trust Company,

Receiver of the State Court, that the latter deliver to him all the assets and effects of said M. Zier & Co. in its hands. On the next day, February 14th, the Receiver in the bankruptcy proceedings, by his attorney, filed in the action pending in the State Court, his petition showing his appointment as Receiver by the United States Court in the bankruptcy proceedings, and praying the State Court to enter an order requiring the New Albany Trust Company as Receiver to turn over and surrender to him as Receiver in bankruptcy the property of M. Zier & Co., which the New Albany Trust Company as Receiver held in its possession. This was the last day of the then term of the State Court, the next term whereof began on the 9th of March following. No action was taken on the petition of the Receiver appointed in the bankruptcy proceedings, and an order was entered continuing the petition until the next term of the State Court. The petition of the Receiver appointed in the bankruptcy proceedings, which was filed in the State Court, made a general appearance in that Court without any reservations whatever. (R., p. 173.)

Notwithstanding the fact that the Receiver in the bankruptcy proceedings filed his petition in the suit in the State Court, he did not await any determination upon that petition but pressed his demand upon the Receiver of the State Court for the delivery by it to him of the property which it held as Receiver of the State Court. The order appointing the Receiver in the bankruptcy proceedings commanded him to take possession of the property from the State Court's Receiver and ordered the latter to deliver the possession of the property to the Receiver in the bankruptcy proceedings. (R., p. 74.) This anomalous situation led the Receiver of of the State Court and its attorney, William W. Watts, to the conclusion that the peremptory order made in the bank-

ruptcy proceedings commanding the Receiver there appointed to take the property from the possession of the Receiver of the State Court was improvidently made by the Bankrupt Court, and that the Bankrupt Court would, upon suggestion, rescind so much of its order as made such requirement. So believing, William W. Watts, attorney for the Receiver in the State Court, telephoned to the Judge of the United States Court at Indianapolis, and requested him to direct the Receiver in the bankruptcy proceedings not to proceed further with his demand until he and the New Albany Trust Company could have an opportunity to explain to the Court the exact circumstances and conditions of the action of Joseph T. Ryerson & Son against M. Zier & Co. pending in the State Court.

The Judge of the United States Court stated in reply by telephone that a hearing of the matters might be had at Indianapolis on February 16th; whereupon the New Albany Trust Company, Receiver, filed its petition in the State Court, in which it stated that the United States Court had appointed a Receiver in bankruptcy proceedings and that the Receiver so appointed was demanding the possession of the property in its hands as Receiver of the State Court, and that in the opinion of the Receiver and its attorney the order of the United States Court commanding its Receiver to take possession of the property peremptorily was improvidently made, and further, that the State Court Receiver and its attorney believed that the United States Court, upon suggestion of all the facts, would rescind its peremptory order, and the petition prayed the advice of the Court in the premises. (R., pp. 41-49.) Upon that petition the State Court on the same day made an order authorizing its Receiver and its attorney, William W. Watts, to go to Indianapolis and without entering their appearance, and by protestation against

appearance except only for the purpose of making the explanation, state to the United States Court the condition of the record in the State Court. (R., pp. 50-53.) Accordingly, Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver, and William W. Watts, its attorney, appeared before the United States Court at Indianapolis on the 16th day of February and exhibited to that Court the order of the State Court authorizing them to appear and make a statement and argument. The discussion before the United States Judge was protracted until February 17th when, finally, the Judge of that Court peremptorily demanded of Henry E. Jewett as the representative of the New Albany Trust Company, Receiver, to know whether or not he would turn over the property in the hands of the New Albany Trust Company, Receiver, to Frederic D. Conner, Receiver, and stated that he did not wish to go down to New Albany with a club, but if it were necessary to go with a club, he would do so; whereupon Jewett answered that he would turn over the property. The same demand was made by the Judge of the United States Court of William W. Watts as the attorney for the New Albany Trust Company, Receiver, and he, under like circumstances, answered that he would advise the New Albany Trust Company, Receiver, to turn the property over to the Receiver appointed by the United States Court.

Watts and Jewett left Indianapolis on the afternoon of February 17th, the former going to Louisville, Ky., and the latter to New Albany, Ind.

The situation was an embarrassing one to William W. Watts as well as to Henry E. Jewett, the representative of the New Albany Trust Company. They knew that they had no authority to make the agreement to turn over the property because they had not been authorized to do so

by the State Court. Watts so keenly felt the situation in which he was put that on the following day, February 18th, in the afternoon, he asked Mr. David A. Sachs, who is a lawyer and his friend, to go to New Albany with him for the purpose of aiding him in undertaking to explain to the Judge of the State Court what had happened at Indianapolis, and as far as possible to justify Watts and persuade the Judge of the State Court to make an order ratifying what had been done. They did go to New Albany together and made an oral statement to the Judge of the State Court. The Judge declined to approve what had been done and they returned to Louisville. On the following morning Mr. Watts and Mr. Sachs returned to New Albany and Mr. Watts filed before the Judge a formal written statement or petition stating what been had done at Indianapolis, and asking leave of the Court to expunge from the record the order made on the 14th of February authorizing the New Albany Trust Company, Receiver, and its attorney to go to Indianapolis, and also to withdraw from the files the petition upon which that order was based. (R., p. 55.) This was done in view of the fact that the Judge of the United States Court was for some reason very much offended because of that order and petition. So far from making the order requested the Judge of the State Court at once entered an order requiring Watts to show cause, if any he could, why he should not be held in contempt of Court. (R., p. 55.)

On the same day, February 19, 1903, the New Albany Trust Company, Receiver, filed in the State Court its petition signed by Henry E. Jewett, Vice-President, stating what had occurred at Indianapolis, and asking leave of the Court to turn the property, in its hands, over to the Receiver appointed by the United States Court in the bankruptcy proceedings. (R., p. 56.) So far from granting the author-

ity asked, the Judge of the State Court made an order citing the New Albany Trust Company to show cause why it should not be punished for contempt of Court. (R., p. 57.)

In the meantime the Receiver of the United States Court was pressing his demand upon the State Court Receiver for a delivery of the property to him, and, on the evening before, the New Albany Trust Company wrote him a letter stating that it had filed its petition in the State Court asking leave of that Court to turn over the property; and that the Judge had stated orally that he wanted the Receiver of the State Court to hold the property until its accounts were rendered and passed upon; the letter suggested further that this might be accomplished on the next day, February 20th, and asked the Receiver of the United States Court to await until that time as it would relieve the receiver appointed by the State Court from much embarrassment; but stated further that if the Receiver appointed by the United States Court would not await until the next day that the New Albany Trust Company, as Receiver, would turn the property over *without any action at all of the State Court*, because it had stated to the Judge of the United States Court that it would do so. (R., p. 33.) The Receiver of the United States Court expressed his unwillingness to delay the delivery of the property, whereupon the property was turned over to him by the New Albany Trust Company, *in disregard of the order of the State Court.* The Judge of the State Court requested all of the attorneys in the case to appear at New Albany before him on the following morning, February 20th.

In deference to this request Watts and Sachs went to New Albany on the morning of February 20th. During that day the Judge made an order removing the New Albany Trust Company as Receiver, and appointing in its stead Charles D. Kelso as Receiver, and ordering him as Receiver

to demand of the New Albany Trust Company and of Frederick D. Connor the possession of the property of M. Zier & Co., and ordering him further to report back to the Court whether or not the demand had been complied with. (R., pp. 59-61.) Late in the afternoon of that day Charles D. Kelso, Receiver, reported to the Judge of the State Court that his demand for the property had been refused; (R., p. 62) whereupon the Judge of the State Court made an order directing the issuance of a writ to the Sheriff of Floyd County commanding him to take possession of the property from Frederick D. Connor and deliver it to Charles D. Kelso, Receiver. (R., p. 63.) That writ was placed in the hands of the Sheriff and executed that evening without any force or violence, and the property was thus placed in the hands of Charles D. Kelso, Receiver of the State Court.

On the 21st day of February, 1903, Frederick D. Connor, who was the Receiver appointed in the bankruptcy proceedings, filed his petition and affidavit in those proceedings in the United States Court (R., p. 78) and upon that affidavit the Court made an order citing Charles D. Kelso, the Sheriff of Floyd County, his two deputies, the watchman placed in charge of the property by Kelso, Receiver, and William W. Watts and D. A. Sachs to appear before him on a certain day to show cause, if any they could, why they should not be held in contempt of that Court for a violation of its orders. (R., p. 92.)

On the same day the United States District Attorney filed an information based upon the same affidavit, charging all these parties with the offense of contempt of the United States District Court, in violating its orders made in the bankruptcy proceedings, in taking the property from the hands of its Receiver, and in withholding it from his possession. The rule and information were tried as to Kelso, the

Sheriff and his deputies, and the watchman placed in charge of the property by Kelso, Receiver, and they were found guilty of contempt, and Kelso was ordered to be confined in the Marion County, Indiana, jail for a period of sixty days, and the others for various periods less than that. (R., p. 92.)

The information and rule were set for trial as to William W. Watts and D. A. Sachs at Indianapolis on the 9th day of March, 1903. They then appeared and the Court required them to respond and plead to the rule and information conjointly. They filed separate responses and pleas.

The response of William W. Watts was in substance as follows:

(1.) That he is not guilty.

(2.) Denying that he committed any act, or advised or consented to the commission of any act, in disobedience of any order of the Court, and denying that he in any way, either directly or by aiding, abetting or advising, forcibly or in any other way, took the property from Frederic D. Connor, Receiver, or withheld the custody of the property from him; yet that the orders of the District Court, insofar as they directed the Receiver of the United States District Court to take the property peremptorily from the hands of the Receiver of the State Court, were void and beyond the power of the Court to make, and that the possession which the Receiver of the United States District Court acquired in the manner in which it was acquired was a wrongful and unlawful possession, and that the retaking of said property in the manner in which it was retaken was a lawful taking.

(3.) All of the record facts were stated in full, both in the action in the State Court and in the bankruptcy proceedings, and further, the respondent stated that he had nothing whatever to do with the making of the order removing the New Albany Trust Company as Receiver and

appointing Charles D. Kelso as Receiver, or with the order directing the issuance of a writ to retake the property, and did not know that such a writ had been ordered until the day after it had been ordered, nor did he know of the taking of the property thereunder until the next day. (R., p. 93.)

Upon the filing of this response the respondent insisted that it should be taken as sufficient, but the Court ruled otherwise, and the trial proceeded (R., p. 171); the United States District Attorney introduced evidence and the defendant introduced evidence, and, after argument of counsel, the Court adjudged the respondent, William W. Watts, guilty of contempt, and ordered that he be confined in the Marion County jail at Indianapolis, Indiana, for a period of sixty days (R., pp. 131-132).

On March 20, 1903, the petitioner asked leave to file in this Court his petition for a writ of habeas corpus and a writ of certiorari and he further moved the Court to be admitted to bail pending the determination of the matters set out in his petition. On March 23, 1903, leave was granted by this Court to file the petition, both the writ of habeas corpus and the writ of certiorari were ordered to issue, returnable April 6th, and it was further ordered that the petitioner be released on his own recognizance. The proceedings are now here for final determination.

The contempt of which the petitioner was adjudged guilty did not consist in any overt act, for it was not pretended that he was present when the Sheriff and his deputies executed the writ issued by the State Court commanding the Sheriff to restore the possession of the property to the Receiver of the State Court, or that he actually aided the Sheriff in executing the writ in any way. The finding of the Court was, and in this the contempt consisted, that the petitioner, as a lawyer, advised, or that he procured David

A. Sachs, another lawyer, to advise that the United States Court did not have jurisdiction to order the property to be taken peremptorily out of the hands of the Receiver of the State Court, and that the possession of Frederic D. Connor, acquired as it was acquired, was a wrongful possession, and that the State Court might lawfully issue a writ commanding the restoration of the possession of the property to its receiver.

We apprehend that this Court, upon this proceeding, can not be concerned about the evidence which was heard upon the trial in the Court below; nevertheless, it is important, perhaps, for the Court to be informed of the precise ground upon which the District Judge determined the petitioner to be guilty of the contempt charged. The District Judge rendered an elaborate opinion, setting out in detail his conclusions of law and of fact. That opinion is in the record and it begins on page 132.

The conclusion of law reached by the District Judge was that the United States Court had plenary power to take summarily from the Receiver of the State Court the property which it held as such. This conclusion is thus stated by the District Judge in the opinion rendered:

> "So the authorities are, I think, plain that when this Court appointed Mr. Connor as Receiver, it had the power to arm that Receiver with sufficient power to take that property from the Receiver of the State Court. If that is not the law, then a number of judges, including some of the best in the country, have been badly mistaken." (R., pp. 157-8.)

The question of fact which the District Judge was called upon to determine on the trial below was thus stated in the opinion rendered by him:

> "This court has no doubt whatever that Kelso, and those with him, who went down on that Friday night

and took possession of this property were guilty of a flagrant, a gross contempt of this court. And they have been punished therefor.

"The question now before this Court is, whether or not these defendants, or either of them, had such connection with that transaction as to make them guilty also?" (R., p. 163.)

Having thus stated the question of fact to be determined, the District Judge, in the opinion rendered, proceeds to consider the evidence upon which he reached the conclusion that the petitioner was guilty of contempt. He said:

"It is claimed for Mr. Watts that he went to New Albany and did everything he could to turn this property over to the receiver of this Court. The evidence shows that Watts was continually declaring and protesting that this property should be turned over. Counsel for Mr. Watts, in the argument in his behalf yesterday afternoon, spoke of the responsibility which this court has, and the power which it has. I trust I fully realize the responsibility which is imposed upon me in this case; I know I take no pleasure in exercising the powers which are incident to my present position. Counsel in that same connection said that Mr. Watts, according to the evidence, had not done one thing or said one word, that no witness had testified to his having done one thing or said one word in furtherance of this wrongful enterprise.

"Until Mr. Watts returned to Louisville and procured his friend Sachs to go to New Albany, Mr. Sachs was a stranger to that proceeding. Mr. Watts undoubtedly got Mr. Sachs into the proceeding. He was over there Wednesday. The evidence in the case shows that when Judge Utz finally decided, at whose instance I know not, to cite the New Albany Trust Company before him for contempt, that Mr. Watts respectfully requested that he be cited also. It is in evidence before this Court that before Mr. Watts was served with the citation to appear and answer the charge of contempt in the Floyd Circuit Court, he informed the gentlemen that he was going to

a restaurant or saloon, I have forgotten which, where he would be, and to send the Sheriff there to serve him. He was in New Albany, during all the time that these proceedings were planned and he returned to Louisville with Mr. Sachs late in the evining of Friday, only a short time before the final proceedings were taken to throw the Receiver of this Court out of the possession of that property.

"I understand these gentlemen, in order to be punished must be found guilty beyond a reasonable doubt, but I do not understand that this Court is bound by the denials of Mr. Watts. If the circumstances surrounding this transaction clearly established to this Court's mind beyond a reasonable doubt that notwithstanding Mr. Watts' protestations and declaration as to his intention and desires—that notwithstanding that, if through Mr. Sachs or by assisting Mr. Sachs he had anything whatever to do with the transactions which culminated in this unlawful act, he is guilty and this Court must find it, if the evidence shows it. Mr. Watts, his counsel asks this Court to believe, throughout those four days, when the evidence in this case shows that he was associating with Judge Utz socially, drinking with him in saloons, hobnobbing with him, in the language of the street, during those four days, was there with his friend Sachs for no other purpose than to appease the wrath of Judge Utz against Watts. It is needless for me to say that this Court does not believe one word of it—not one one word of it. I can not believe it. The only solution of his conduct that can be reached consistently with the evidence is this; according to his own testimony, the nearer he got to Louisville, the more he concluded that he had made a mistake in offering to turn the property over. But he had offered. Mr. Watts is one of those lawyers who prides himself on keeping his agreements made in Court. I have known many such. Therefore, he did not wish to put himself in the position of openly violating the voluntary promise he had made in this Court. So he procured his friend Sachs to go with him to New Albany and Sachs is put forward as the active manager of this thing and Watts remains in the background and continually protests that he wants to turn this property

over and keep his agreement with the United States Court. He is like some other people. He protests too much. So I have come to the conclusion that Mr. Watts is guilty of a flagrant contempt of this Court." (R., pp. 167, 168, 169.)

ARGUMENT.

I.

The three following propositions are firmly established by the decisions of this Court: (1) that the judgment of a Court of general jurisdiction punishing a person for criminal contempt, is not subject to review by writ of error or appeal to this Court; (2) that when a Court of the United States adjudges a person in contempt for refusing to comply with an order which that Court had no authority to make, the order itself is void and the order punishing him is likewise void; (3) that when the proceeding for contempt in the latter case results in imprisonment, this Court will, by a writ of habeas corpus, discharge the prisoner.

The following is the first paragraph of the opinion of this Court delivered by Mr. Justice Matthews *In re* Ayers, 123 U. S. 485:

> "It is established by the decision of this Court, that while 'the exercise of the power of punishment for contempt of their orders, by Courts of general jurisdiction, is not subject to review by writ of error, or appeal to this Court,' yet, when 'a Court of the United States undertakes, by its process of contempt, to punish a man for refusing to comply with an order which that Court had no authority to make, the order itself, being

without jurisdiction, is void, and the order punishing him for contempt is equally void;' and that, 'when the proceedings for contempt in such a case results in imprisonment, this Court will, by its writ of habeas corpus. discharge the prisoner.'"

In *Ex parte* Rowland, 104 U. S. 604, Mr. Chief Justice Waite, delivering the opinion of this Court, said:

"The single question we have to consider on this application is, whether the order of the Circuit Court, made on the 21st of November, is sufficient authority to the Marshal for the detention of the persons he holds under it; and that question, as is conceded on both sides, depends entirely on the power of that Court to require the Court of county commissioners to do what its members have been held to be in contempt for not doing. If the command of the peremptory writ of mandamus was in all respects such as the Circuit Court had jurisdiction to make, the proceedings for the contempt are not reviewable here. But if the command was in whole or in part beyond the power of the Court, the writ, or so much as was in excess of the jurisdiction, was void, and the Court had no right in law to punish for any contempt of its unauthorized requirements. Such is the settled rule of decision in this Court."

These rules are supported by an unbroken line of decisions of this Court.

Ex parte Lange, 18 Wall. 163.
Ex parte Rowland, 104 U. S. 604.
Ex parte Fisk, 113 U. S. 713.
In re Ayers, 123 U. S. 443.
In re Lane, 135 U. S. 443.
In re Tyler, 149 U. S. 164.
In re Bonner, 151 U. S. 242.
In re McKenzie, 180 U. S. 536.

In such cases the writ of certiorari will also be allowed by this Court in aid of the writ of habeas corpus and for the purpose of enlarging the scope of the latter writ.

Ex parte Lange, 18 Wall. 163.

In re Chetwood, 165 U. S. 443.

U. S. Revised Statutes, Sec. 716.

The final decision of the case at bar, therefore, rests upon the answers to be made to these questions:

1. Was the order of the United States Court, commanding its Receiver to take peremptorily from the possession of the State Court Receiver the property which was in its hands as Receiver, void or in excess of the power of the United States Court?

2. Was the possession of the property by Frederic D. Connor, who was the Receiver in bankruptcy, acquired in the manner stated, a lawful possession?

3. Did the State Court have the right and authority to issue a summary writ, commanding the taking of the property from the possession of Frederic D. Connor and restoring it to the State Court's Receiver?

II.

1. Was the order of the United States Court, commanding its Receiver to take peremptorily from the possession of the State Court Receiver the property which was in its hands as Receiver, void or in excess of the power of the United States Court?

This Court has over and over again held the proposition to be universal that where one Court has acquired jurisdiction over property, another Court may not interfere summarily with that possession.

This rule is stated as follows by Mr. Justice Matthews, in Covell vs. Heyman, 111 U. S. 182:

> "The forbearance which Courts of co-ordinate jurisdiction administered under a single system, exercise toward each other, whereby conflicts are avoided by avoiding interference with the process of each other, is a principle of comity, with perhaps, no higher sanction than the utility which comes from concord; but between State Courts and those of the United States, it is something more. It is a principle of right and law, and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These Courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

In the case of Shields vs. Coleman, 157 U. S. 168, the Circuit Court of the United States had originally taken property into its possession by the appointment of a receiver and thereafter accepted a bond in lieu of the property and discharged its receiver. After this was done the State Court, upon the petition of certain creditors, appointed a receiver who took possession of the property, and the Circuit Court of the United States reappointed its Receiver and took the property from the Receiver of the State Court. In reversing the judgment of the lower Court this Court, speaking through Mr. Justice Brewer, said:

> "Had the Circuit Court of the United States, when this property was in the possession of the Receiver

appointed by the State Court, the power to appoint another Receiver and take the property out of the former's hands? We are of the opinion that it had not."

It has been supposed in some quarters—and this was the view of the District Judge—that this rule of comity which is necessarily universal in its application, is abrogated or does not exist where the conflict is between a Court of Bankruptcy and a State Court. This contention finds no support in any utterance of this Court, but quite upon the contrary this Court has held under every act of Congress providing a uniform system of bankruptcy that the rule is applicable in all its vigor to Bankrupt Courts.

In Peck, et al, vs. Jenness, et al, 7 How. 611, it was held that this doctrine of comity applied with equal force as between the Bankrupt Courts of the United States on the one hand and the State Courts on the other under the Bankrupt Act of 1841. There this Court, through Mr. Justice Grier, said:

> "It is a doctrine of law too long established to require a citation of authorities, that, where a Court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decisions be correct or otherwise, its judgment till reversed, is regarded as binding in every other Court; and that where the jurisdiction of a Court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another Court. These rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice."

In Eyster vs. Gaff, et al., 1 Otto, 521, which was a case arising under the Bankrupt Act of 1687, this Court, in an opinion by Mr. Justice Miller, said:

> "It is a mistake to suppose that the Bankrupt Law avoids of its own force all judicial proceedings in the State or other Courts the instant one of the parties is adjudged a bankrupt. There is nothing in the act which sanctions such a proposition."

And again in the same opinion this Court says:

> "The opinion seems to have been quite prevalent in many quarters at one time, that, the moment a man is declared bankrupt, the District Court which has so adjudged, draws to itself by that act not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any other Court, except in so far as the Circuit Courts have concurrent jurisdiction, and that other Courts can proceed no further in suits of which they had at that time full cognizance; and it was a prevalent practice to bring any person, who contested with the assignee any matter growing out of disputed rights of property or of contracts, into the bankrupt court by the service of a rule to show cause and to dispose of their rights in a summary way. This Court has steadily set its face against this view."
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> Marshall vs. Knox, 16 Wall. 551.
> Doe vs. Childress, 21 Wall. 643.

Mr. Justice Miller, sitting on circuit, in the case of Johnson, Assignee, vs. Bishop, Sheriff, Woolworth, 324, delivered an instructive opinion, holding the same proposition under the Bankrupt Law of 1867.

The very recent case of Metcalf vs. Barker, decided by this Court, December 1, 1902, 23 Supreme Court Reporter, 69, distinctly holds that this general doctrine of comity is

applicable in all its vigor to the Bankrupt Courts of the United States under the present Bankrupt Law. This Court there refers to and approves the cases of Peck vs. Jenness, 7 How. 612; Doe vs. Childress, 21 Wall. 642; Eyster vs. Gaff, 1 Otto, 521, and affirms the application of the doctrine of those cases to Bankrupt Courts to-day.

Dever Pickens vs. Susan C. Dent Roy, et al, 23 Supreme Court Reporter, 78.

It was also supposed at one time that where a Federal Court is exercising its exclusive admiralty jurisdiction that such jurisdiction, when invoked, supersedes and annuls the jurisdiction of the *res* theretofore acquired by a State Court, and that the general doctrine of comity did not exist in such case. This proposition was denied by this Court in the case of Taylor, et al., vs. Carryl, 20 How. 583. Mr. Justice Campbell, delivering the opinion of this Court, there said:

> "But it is in this Court that the principle stated in Payne vs. Drew has received its clearest illustration, and been employed most frequently, and with most benignant results. It forms a recognized portion of the duty of this Court to give preference to such principles and methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States of the Union, so that they may co-operate as harmonious members of a judicial system coextensive with the United States, and submitting to the paramount authority of the same Constitution, laws and Federal obligations; the decisions of this Court that disclose such an aim, and that embody the principles and modes of administration to accomplish it, have gone from the Court with authority, and have returned to it, bringing the vigor and strength that is always imparted to magistrates, of whatever class, by the approbation and confidence of those submitted to their government."

2. In the case at bar the State Court was a Court of general jurisdiction and had full power under the laws of the

State of Indiana to appoint a Receiver. This power it exercised and appointed a Receiver who, after qualifying under the law, took the property of M. Zier & Company into its possession under the orders of the State Court. The State Court authorized its Receiver to continue the business for the purpose of completing certain unfinished contracts which the defendant in the suit had made before the appointment of the Receiver. The Receiver was authorized to and did purchase new materials for this purpose, and contracted debts upon the faith of the property in its hands as Receiver, and to all of which such property must respond. If the doctrine of comity were thrown away and the Receiver of the State Court put upon the plane of a mere voluntary assignee, his possession was an *adverse* possession which could not be disturbed by mere summary process. It would be monstrous to hold that the Bankrupt Court in this condition of affairs had the right summarily to take the property out of the possession of the State Court and leave the rights of the many parties, including the creditors of the Receiver, which had attached in the State Court proceeding to be settled as best they could. We contend that the attitude of a mere voluntary assignee bears no likeness to the attitude of a receiver appointed by a State Court of general jurisdiction, for in the one case the property is not *in custodia legis*, while in the other case it is; yet, if by any possibility the rules applicable to the one can be applied to the other, still the possession of the Receiver of the State Court in the case at bar was such as that summary process against him to wrest the property from his possession could not be issued by the District Court, because it held the property adversely.

Louisville Trust Co. vs. Comingor, 184 U. S. 18.

Shields vs. Coleman, 157 U. S. 168.

This Court has held that the Bankrupt Courts under the present Bankrupt Law not only can not issue summary process to recover property held adversely, but that neither the Bankrupt Courts nor the Circuit Courts of the United States have jurisdiction in plenary suits for that purpose except they be brought in the Federal Court by consent of the party sued.

Bardes vs. Hawarden Bank, 178 U. S. 524.

Moreover, at the time the United States Court made its summary orders there had been no adjudication that the debtor is a bankrupt, and *non constat* that he ever would be adjudged a bankrupt.

3. But the question here is not one of the *right* of possession. It is a question of proper procedure. The *necessity* out of which the rule of comity arises exists in the case where the Bankrupt Court has in fact the ultimate right of possession as well as in the case where the State Court has the ultimate right of possession. The real question is not at all which Court has the *right* of possession, but whether the Court which has the *actual* possession shall be disturbed in that possession by a summary process from another Court which claims that it has the right of possession. This being true, as we understand the rule, it is useless to argue how far the proceedings in bankruptcy annul assignments made under State laws of receiverships in State Courts based upon insolvency of the defendant debtor. All these questions are aside from the question at bar. The question here is one merely of orderly procedure. In the language of the opinion of this Court in Covel vs. Heyman, 111 U. S. 182, when a Federal Court or a State Court takes into its jurisdiction a specific thing:

> "That *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a

different territorial sovereignty. To attempt to seize it by a foreign process is futile and void."

And it matters not whether the Federal Court is sitting in bankruptcy, or exercising its ordinary jurisdiction, the rule is the same, and this is so of necessity. The Court claiming the possession of the property which is actually in the possession of the other Court, must, by its properly appointed officer, go to the Court having the possession and there present the claim and have it adjudged. It is to be presumed, absolutely, that the judgment will be right, but whether right or wrong the remedy is by appeal from that judgment.

In Doe vs. Childress, 21 Wall. 643, this Court approvingly quotes the following from the case of Kent vs. Downing, 44 Ga. 116:

> "The assignee may on his own motion be made a party, if for no other reason than to have it properly made known to the Court that the defendant has become bankrupt. He has also a right to move to dismiss the attachment. The adjudication of bankruptcy must be made known to the Court in some authentic mode. It may be denied, and the State Court can not take notice of the judgment of other Courts by intuition. They must be brought to the notice of the Court, and this can not be done without parties."

In the case at bar the orderly procedure would have been to have the Receiver appointed in the Bankrupt Court present his claim to the State Court and there have his claim determined. If in his favor, very well; but if against him, he should appeal to the Supreme Court of the State, and if there still the judgment were against him, he should resort to a writ of error to bring the question to this Court for final decision. This would have been the orderly procedure.

This is the only tolerable procedure, and the only one which this Court can possibly sanction. Any other course means riot. Courts are constituted to prevent riotous conflicts and not to engage in them.

The Receiver of the United States Court in the case at bar did actually present his petition in the State Court, praying that the property in the hands of the Receiver of the latter Court be turned over to him. He appeared generally for the purpose of having his rights determined in the State Court. This petition was filed on the last day of the term of the State Court. The Court could not or did not determine it instantly, and the petition was continued until the next term of the Court, which began in about three weeks. This petition was filed on the 14th day of February, 1903. On the 17th day of February, 1903, the Judge of the United States Court entered another order again commanding the Receiver of the United States Court to take the property. The language of that order is as follows:

> "It is now hereby ordered by the Court that said Connor, Receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as Receiver of the Floyd Circuit Court." (R., p. 78.)

Under this order the Receiver of the United States Court pressed his demands until the State Court Receiver, without any authority from the Court appointing him, and in direct opposition to the Judge of the State Court, delivered the property to him; but this was not done until after the State Court Receiver had been told by the Judge of the

United States Court that he did not wish to come to New Albany with a club but that he would do so if necessary.

We submit that the orders of the United States Court commanding the Receiver of that Court to take summarily the possession of the property in the hands of the Receiver of the State Court are utterly void.

III.

Was the possession of the property by Frederic D. Connor, who was the Receiver in bankruptcy, acquired in the manner stated, a lawful possession?

It is claimed that the property was voluntarily turned over by the Receiver of the State Court to the Receiver in the bankruptcy proceedings. The Receiver in the State Court was not a party to the bankruptcy proceedings. He had nowhere appeared in those proceedings by any pleading of any kind; yet the order entered in the bankruptcy proceedings as of date February 17, 1903, contains the following:

> "And said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice-president, and by William W. Watts, it solicitor, and after argument by counsel, the said New Albany Trust Company as Receiver of the Floyd Circuit Court by its said Vice-president having voluntarilyoffered and agreed by and with the consent and approval of said William W. Watts, its solictior, in open Court to surrender full and immediate possession and control of the property and assets of said M. Zier & Co. in its possession or under its control as Receiver of said Floyd Circuit Court, to said Connor as Receiver of this Court upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court."

That consent, whatever it amounted to, was obtained under the singular circumstances hereinbefore stated. It was not in fact voluntary, but the consent was made following the assertion of the Court that it did not wish to go to New Albany with a club, but that it would do so if necessary. But, however all this may be, the consent amounted to nothing. The appearance was made under an order of the Floyd Circuit Court expressly limiting the power of the Receiver to the making of a statement of the condition of the record of the Floyd Circuit Court. That order directed the Receiver of the State Court not to make a general appearance, but a limited one only for the sole purpose of explaining to the United States District Court the condition of the record in the State Court. After that statement was made the peremptory inquiry was made by the Court of the representative of the Receiver whether he would turn the property over. Feeling that he must do so or suffer the consequences, the Receiver, in violation of the orders of the State Court made the agreement. The agreement amounted to nothing. It was beyond the power of the Receiver to make. The Receiver was the mere custodian, with all its powers and rights confined by the orders of the State Court. Beyond this he had no power. This the United States District Court knew at the time. It is fundamental that a Receiver has no powers aside from those conferred upon him by the orders of the Court by which he was appointed. If a Receiver might give up the property in his possession which he holds for the Court, and as an arm of the Court, without the consent or direction of the Court which appointed him, there would be an end of receiverships. This Court said in Davis vs. Gray, 16 Wall. 217, with respect to the powers of Receivers:

> "A Receiver is appointed upon a principle of justice for the benefit of all concerned. Every kind of property

of such a nature that, if legal, it might be taken in execution, may, if equitable, be put into his possession. Hence the appointment has been said to be an equitable execution. He is virtually a representative of the Court and of all the parties in interest in the litigation wherein he is appointed. He is required to take possession of property as directed, because it is deemed more for the interests of justice that he should do so than that the property should be in the possession of either of the parties in the litigation. He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is in *custodia legis*. He has only such power and authority as are given him by the Court, and must not exceed the prescribed limits. The Court will not allow him to be sued touching the property in his charge, nor for any malfeasance as to the parties, or others, without its consent; nor will it permit his possession to be disturbed by force, nor violence to be offered to his person while in the discharge of his official duties. In such cases the Court will vindicate its authority, and, if need be, will punish the offender by fine and imprisonment for contempt. The same rules are applied to the possession of a sequestrator. Where the property in the hands of the receiver is claimed by another, the right may be tried by proper issues at law, by a reference to a master or otherwise, as the Court in its discretion may see fit to direct."

We regard it wholly unnecessary to cite authorities to show that the act of the Receiver in agreeing to deliver up the property in his hands was wholly void for want of authority from the Court which appointed him.

The unauthorized agreement of the Receiver of the State Court to give up the property in his hands to the Receiver of the Bankrupt Court, being void for want of authority, it follows that his carrying out the agreement by actually delivering the property was also wrongful. By that act Frederic D. Connor came into the wrongful possession of the property, and the wrong was committed as against

the State Court and with respect of property which was then in the hands of the State Court, in *custodia legis*.

We submit that the possession of the property by Frederic D. Connor, acquired in the manner in which it was acquired, was an unlawful possession.

IV.

Did the State Court have the right and authority to issue a summary writ, commanding the taking of the property from the possession of Frederic D. Connor and restoring it to the State Court's Receiver?

We have shown, as we think, conclusively, that the possession of the property by Frederic D. Connor, who was Receiver of the United States Court, was a wrongful possession. It follows, therefore, we submit, that the State Court had the power and the right, by process issued from that Court directed to its proper officer, to restore the possession of the property to its Receiver. This the State Court did by putting a writ into the hands of the Sheriff of the County, an officer of that Court. The Sheriff peaceably executed the writ and restored the property to the rightful possession of the Court by putting it into the hands of the Court's Receiver as the writ directed the Sheriff to do. That retaking of the property was a lawful taking. Frederic D. Connor was in possession of the property. He could not justify his possession by asserting that he was Receiver of the United States Court, and as such held the property; for, notwithstanding the fact that he was the Receiver of the United States Court, his possession was not a lawful possession under any lawful order, or any lawful proceeding had by him as such receiver. He, therefore, held the property unlawfully and the fact that he was Receiver did not justify the unlawful holding.

As said by this Court in Shields vs. Coleman, 157 U. S. 168:

> "The mere forcible continuance of possession by the Federal Court does not transform that which was in the first instance wrongful into a rightful possession."

This point has been expressly decided by this Court in White vs. Schloerb, 178 U. S. 542. In that case, after an adjudication in bankruptcy, an action of replevin in the State Court was commenced against the bankrupt to recover property in the possession of and claimed by the bankrupt at the time of that adjudication, and in the possession of the Referee in Bankruptcy at the time when the action of replevin was begun. The property, having been taken under the replevin proceedings, it was held by this Court that the District Court of the United States sitting in bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized. In that case, in the opinion rendered, this Court uses this expression:

> "Not going beyond what the decision of the case before us requires, we are of opinion that the Judge of the Court of Bankruptcy was authorized to compel persons, who had forcibly and unlawfully seized and taken out of the judicial custody of that Court property which had lawfully come into its possession as part of the bankrupt property, to restore that property to its custodian, and therefore, our answer to the first question would be: 'The District Court sitting in Bankruptcy had jurisdiction by summary proceedings to compel the return of the property seized.'"

In the very recent case of Metcalf vs. Barker, decided by this Court on December 1, 1902, Mr. Chief Justice Fuller, in delivering the opinion of the Court, referred to the quotation

last above made from the case of White vs. Schloerb, and said:

> "This cautious utterance—and courts must be cautious when dealing with the conflict of jurisdiction—sustains as far as it goes the converse of the proposition when presented by a different state of facts."

We respectfully ask that the petitioner be discharged.

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